IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9759 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DASHRATHBHAI MOJIRAMBHAI DESANI

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 9759 of 2001

MR BC DAVE for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1

MR SS PATEL, AGP for Respondent No. 2

RULE SERVED for Respondent No. 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 06/12/2001

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 22-9-2001 passed by the District Magistrate, Vadodara, in exercise of powers under Section 3(2)) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. Mr.B.C.Dave, learned advocate for the petitioner has raised specific contention in para 7 of the petition that the detaining authority has not considered the aspect that if the detenu is actually involved in the offence, he would have been arrested and granting of his bail would have been opposed by the authority and if bail is granted, authority would have gone for cancellation of bail which aspect has not been considered by the detaining authority and, therefore, there is non-application of mind on the part of the detaining authority and, hence, continued detention is illegal. He has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

"Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

3. Whereas District Magistrate, Mr.Bhagyesh Jha, vide his affidavit dated 3-12-2001 has replied in para 6 as follows:

"With respect to the averments made in para 7, the same are denied. It is submitted that in light of details given vide para 4 and looking to the activities of the petitioner, since the arrest is the only alternative, the order of arresting the petitioner is made. Therefore, the representation of the petitioner is not required to be entertained."

4. It seems from the above reply that there is non-application of mind on the part of detaining

authority and hence, in view of the judgment rendered in Amritlal (supra), the continued detention of the detenu is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 22-9-2001 passed against the detenu is hereby quashed and set aside. The detenu Dashrathbhai Mojirambhai Desani is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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